



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord applied for a Monetary Order for damage to the unit; unpaid rent or utilities; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and pet deposit. The tenants applied for return of their security deposit and pet deposit.

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation in the amount claimed for damage; unpaid utilities; and damage or loss under the Act, regulations or tenancy agreement?
2. Is the landlord authorized to retain the security deposit and/or pet deposit or should the deposits be returned to the tenants?

Background and Evidence

The parties entered into the original tenancy agreement for a tenancy set to commence September 15, 2009 and the tenants paid a security deposit of \$925.00 and a pet deposit of \$400.00. Subsequent tenancy agreements were entered into with the latest tenancy agreement commencing October 1, 2011 and requiring the tenants to pay rent of \$1,908.00 on the 1st day of every month. The tenancy ended September 30, 2012.

It was undisputed that the tenants and an agent for the landlord participated in a move-in and move-out inspection together. Condition inspection reports were prepared and copies were provided to the tenants. The agent who prepared the move-out inspection report is no longer working for the landlord and did not appear at the hearing.

Below, I have summarized the landlord's claims against the tenants and the tenants' responses.

Utility bills

The landlord submitted that the tenants were responsible for paying for the "utility" bills which are made up of water and sewer charges. The landlord pointed to the latest tenancy agreement in support of this position. Although the landlord had supplied copies of three utility bills, the landlord had a difficult time verbally submitting the amounts that made up the claim. The landlord indicated that there was some sort of agreement that the owner would pay or provide the tenants with a partial credit but that the landlord did not provide any further specifics. The utility bills submitted as evidence were as follows:

February 29, 2012 utility bill	\$ 154.43
June 27, 2012 utility bill	\$ 143.63
October 30, 2012 utility bill	<u>\$ 226.05</u>
	\$ 524.11

The tenants submitted that water and sewer was previously included in rent but that they agreed to pay for water charges in exchange for no rent increase when they agreed to enter into the last tenancy agreement. The tenants did not agree that they owed the landlord for sewer charges. The tenants submitted that there was another document in the landlord's possession indicating they had agreed to pay water only. The landlord stated that she was unaware of any such document and the tenants did not provide a copy of such.

The tenants further submitted that the last utility bill includes days for which they did not occupy the rental unit and they did not agree with having to pay for those days.

The tenants calculated and were agreeable to paying \$97.17, \$90.91 and \$126.84 for water for the days they occupied the rental unit based upon the above bills.

Cleaning

The landlord hired two cleaners for four hours each, at a total cost of \$200.00, to clean various items indicated on the condition inspection report including: appliances in the kitchen, the laundry room, and blinds in various rooms.

The tenants acknowledged that some additional cleaning was required but were of the position that the charge of \$200.00 was excessive when compared to the amount they paid (\$175.00) to clean the entire house in five hours. They also submitted that the

landlord's agent had indicated that \$200.00 was a standard charge regardless of the amount of cleaning required.

The landlord denied there is a standard charge of \$200.00 but indicated that there is a cap of \$200.00 for estimates and that the actual invoice came in at \$200.00. Cleaners are paid an hourly rate of \$25.00 for the hours spent cleaning.

Keys

The landlord is seeking \$60.48 to have additional keys cut because the tenants did not return all of the keys.

The tenants submitted that the former property manager informed them that the locks were going to be changed anyways so not to bother returning the all of the keys in their possession.

The landlord stated in response that the landlord does not automatically re-key a rental unit at the end of the tenancy.

Carpet replacement

The landlord submitted that the carpeting was seven years old and needed to be replaced at the end of this tenancy due to a urine odour.

The tenants stated that the carpeting was white and was rather difficult to keep clean looking. However, the tenants denied that the rental unit smelled of urine and that such a concern was never brought to their attention during their quarterly inspections or at the time of the move-out inspection. The tenants submitted that the move-out inspection report was altered after they signed it to indicate there was a urine odour. The tenants pointed out that the quote provided in support of the claim for carpet replacement also included a quote for new laminate flooring.

The landlord acknowledged that the claim of \$6,137.20 for carpet replacement erroneously included replacement of laminate flooring and that the laminate flooring charge of \$1,564.64 should be excluded from the claim. The landlord also acknowledged that depreciation of the old carpet should be deducted from the award.

The landlord was unaware of the move-out condition inspection report being altered after it was signed by the tenants. The landlord testified that the move-out inspection report submitted as evidence is as given to her by the former property manager.

It was undisputed that the tenants did not receive a copy of the move-out inspection report immediately after it was signed; however, the parties were in dispute as to when a copy was sent to the tenants. I requested the original condition inspection be provided to me for my review. The landlord agreed to supply the original to me within seven days of the hearing date; however, the document was not received as of the date of this decision.

The landlord acknowledged that a concern of odour or cleanliness would not be brought up to a tenant during the quarterly inspection as it is expected the tenants rectify any damage or odour by the end of the tenancy.

The landlord testified that after a showing of the rental unit to a prospective tenant the property manager informed the landlord that there was a urine smell in the rental unit. The tenants suggested that a urine odour may have been coming from the cat's litter box.

Painting

The landlord is seeking \$1,680.00 from the tenants for painting and minor wall repairs due to numerous scuffs, dings, and dents in the walls and trim, especially in the entry. The rental unit was last re-painted four years prior.

The tenants were of the position the walls and trim were already scuffed when they moved in, as evidenced by the move-in condition inspection report and any additional scuffs would be attributable to normal wear and tear. Further, the tenants observed patches in the walls when they moved in that were not sufficiently covered with paint.

Loss of Rent

The landlord is seeking to recover loss of rent for the month of October 2012 due to the damage caused to the unit by the tenants. The landlord stated the unit remains vacant despite attempts to re-rent it.

The tenants objected to being held responsible for loss of rent for October 2012 as they gave sufficient notice to end the tenancy and are of the position they are not responsible for damaging the rental unit.

Tenants' Application – return of security deposit and pet deposit

The tenants submitted that they filed to request return of their security deposit and pet deposit because the landlord had not complied with time limits required under the Act. The tenants submitted that they did not receive the landlord's Application for Dispute

Resolution until October 17, 2012. Further, the move-out inspection report was not given to them until they were served with the landlord's evidence package.

I noted the tenants had not requested return of double the security deposit or pet deposit. The tenants confirmed that they were not seeking return of double the security deposit or pet deposit.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to each of the Applications before me.

Utility bills

Section 6(3) of the Act provides that in order for a term of a tenancy agreement to be enforceable it must be "expressed in a manner that clearly communicates the rights and obligations under it." In order to determine whether the tenants are responsible for water and sewer, as submitted by the landlord, I have turned to the written tenancy agreement for the tenancy that commenced October 1, 2012.

Clause 1.2 of the tenancy agreement states "The following services and facilities are included in rent:" and below that statement is a box with various services indicated, including water and sewage disposal. Under the box is the following notation: "***Tenant will start paying their own utility (October – Dec/11) due: Jan 2012".

While I accept that the word "utility" may include water and sewer service, the term utility is also frequently used to describe other services such as electricity or natural gas. The use of the word "utility" is undefined in the tenancy agreement and I accept that by virtue of its ordinary meaning, it includes water and sewer services.

Since the box in clause 1.2 indicates water and sewer is included in rent and the notation below the box indicates that the tenants are responsible for paying utilities, I find the terms of tenancy are conflicting. I find that a conflicting term does not clearly communicate the tenant's obligations as required by the Act. Therefore, I find the landlord has not provided an enforceable term in the tenancy agreement that would establish an obligation for the tenants to pay water and sewer charges and I dismiss this portion of the landlord's claim against the tenants.

Cleaning

Based upon the move-out inspection report and the testimony provided during the hearing I accept that the following items were dirty at the end of the tenancy: fridge;

stove; washer; dryer; laundry shelf; fireplace; some areas of the walls and trim; and, window coverings in the living room, family room, kitchen, and living room. The tenant's submit that the \$200.00 charged to the landlord is excessive. It is the tenants' burden to establish the charge is unreasonable or excessive.

I accept that some of the items requiring additional cleaning may have been cleaned quickly; however, other items, such as blinds may be more time consuming. Therefore, I accept that the cleaning charge is within a reasonable range and I grant the landlord's claim for cleaning in the amount of \$200.00.

Keys

The Act requires that a tenant return all of the keys to the landlord at the end of the tenancy. The move-out inspection report states that two keys were missing at the end of the tenancy. I accept that the notation was there when the tenant's signed the inspection report and in the absence of any notation that the tenants would not be held responsible for the missing keys I find the tenants responsible for the cost of replacing two keys.

However, upon review of the invoice provided by the landlord I note that the landlord paid a contractor \$47.50 per hour, plus HST, for time spent to have the keys cut. I find this charge exorbitant and if the landlord chooses to pay such rates for key cutting I do not hold the tenants responsible for that decision. Therefore, I deny the labour charge on the premise that the landlord did not take reasonable action to minimize the landlord's loss.

Pursuant to the invoice, I award the landlord the amount paid for the cost of two cut keys, or \$6.50.

Carpet replacement

Both parties pointed to the condition inspection report in support of their respective positions about carpet replacement. I have carefully reviewed the condition inspection report submitted as evidence.

Although the condition inspection report provides space for the landlord to indicate the condition of the flooring in every room, the landlord did not indicate its condition in the space provided at the beginning or end of the tenancy. Rather, on the lines provided to describe the condition of the flooring the landlord placed a diagonal slash mark, at the beginning and end of the tenancy, instead of a letter that corresponds to the legend on the report. I find this curious as the condition of most every other item on the report has a corresponding letter to the legend. By not indicating the condition of the flooring in

each room in the space provided, the condition of the flooring at the beginning of the tenancy is undocumented and the condition at the end of the tenancy was left to one notation on the last page of the report. The basis for that notation and when it was added to the report was called into question by the tenants.

The landlord's failure to supply me with the original condition inspection report as I requested leads me to accept the tenant's submission that the notation about the carpeting was added after they signed the report.

Having accepted that the notation concerning the carpeting at the end of the tenancy was added after the tenants signed the condition inspection report I give the condition inspection report no evidentiary weight that the carpeting required replacement due to urine odour. Thus, I proceed to consider whether the landlord has other evidence to show that the carpets need replacement due to a urine odour.

I find the landlord's verbal testimony that a property manager showing the property during the tenancy reported a smell of urine amounts to hearsay and the tenant's countered with a reasonable response that it may have been the smell of the litter box.

The only other evidence in support of the claim for carpet replacement is an undated "quote" for carpet and laminate flooring replacement. This document may offer some evidence as to the cost to install new carpeting but it does not offer evidentiary value as to the reason why carpet replacement is required. Of further consideration is that the document is a quote only and included replacement of laminate flooring which the tenants did not damage. Therefore, I find the quote offers no evidentiary value as to the reason the carpeting requires replacement.

Where carpeting truly needs to be replaced, I find it reasonable to expect that this would be accomplished in a reasonable amount of time after the tenancy ended. I was not provided evidence that the carpeting has since been replaced.

Considering all of the above, I find the landlord has not met its burden to prove, on the balance of probabilities, that the carpeting requires replacement due to the damage caused by the tenants. Therefore, I dismiss this portion of the landlord's claim against the tenants.

Painting

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the

depreciation of the original item. In order to estimate depreciation of the replaced item, where necessary, I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*.

Interior paint has an average useful life of four years. Since the rental unit was last painted four years prior I find the paint was at the end of its useful life. I also note that the move-in inspection report indicates that scuffs and marks were present at the beginning of the tenancy. Accordingly, I find the landlord did not suffer a loss due to the tenant's damage or neglect and I deny this portion of the claim.

Loss of Rent

Where a tenant is responsible for damaging a rental unit a landlord may include loss of rent that results from that damage in the landlord's claim against the tenant. Accordingly, the loss of rent awarded to the landlord should reflect the extent of the damage for which the tenant is responsible.

As the landlord has failed to establish the tenants are responsible for painting or damaging the carpet to the point it requires replacement I deny the landlord's claim for loss of rent. I find the additional cleaning required insufficient to warrant an award for loss of rent as part of the damage claim.

Filing fee

Taking into account the relative success of the landlord's claim against the tenants I award the landlord \$10.00 towards the filing fee.

I make no award for the filing fee paid by the tenants as I find their application was unnecessary.

Security deposit and Monetary Order

I authorize the landlord to retain the sum of \$216.50 from the tenant's security deposit for cleaning, key cutting, and the filing fee. I order the landlord to return the balance of the tenants' security deposit and pet deposit in the amount of \$1,108.50 to the tenants without further delay.

The tenants are provided a Monetary Order in the amount of \$1,108.50 to serve upon the landlord. The Monetary Order may be filed in Provincial Court (Small Claims) and enforced as an order of the court.

Conclusion

The landlord has been authorized to deduct \$216.50 from the tenants' security deposit. The landlord is ordered to return the balance of the deposits, in the amount of \$1,108.50, to the tenants without further delay. The tenants are provided a Monetary Order in this amount to serve upon the landlord and enforce as necessary.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 5, 2013

Residential Tenancy Branch

